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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/804,522 | 03/12/2001 | Paul E. Johnson | W02.101 | 9091 |

26344 7590 08/07/2003

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EXAMINER

LAVARIAS, ARNEL C

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

2872

DATE MAILED: 08/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/804,522

Applicant(s)

JOHNSON, PAUL E.

Examiner

Arnel C. Lavarias

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendments to the specification of the disclosure in Paper No. 11, dated 6/11/03, are acknowledged and accepted.

Response to Arguments

2. The Applicant argues that Maekawa et al. fails to teach or reasonably suggest the LED illumination source device for use in a flow particle detection device, comprising 1) an LED for providing light at a selected wavelength; and 2) an optical element for collecting nearly all of the light from the LED and concentrating the collected light at a selected volume within a flow sample stream. The Examiner respectfully disagrees. With regard to an LED, Maekawa et al. specifically discloses that a CW (continuous wave) emission type source, such as an LD (laser diode), LED (light-emitting diode), SLD (superluminescent diode) or the like (See col. 5, lines 6-13; col. 6, lines 59-62), may be used to illuminate the particle flow stream. With regard to the optical element for collecting nearly all of the light, Maekawa et al. discloses the use of standard light collecting lenses (See for example 4, 5, 6 in Figure 5) to gather and redirect the light emitted from the LED, as well as from the flow stream, to a detection system. The Examiner notes that the phrase 'nearly all' is relative since such phrase has not been quantified by the Applicant. Any amount of incident light collected by an optical element may be construed as collecting nearly all of the incident light by the optical

Art Unit: 2872

element. Furthermore, Claim 1 fails to set forth any distinguishing structural, or positional (as indicated by the Applicant's arguments in Paper No. 11, dated 6/11/03), limitations that allow an optical element to collect *nearly all* the light from an LED. As such, Maekawa et al. discloses all the structural limitations as recited in Claim 1.

3. Claims 1-20 are rejected as follows.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-2, 6-8, and 13 rejected under 35 U.S.C. 102(e) as being anticipated by Maekawa et al. (U.S. Patent No. 5644388).

See Section 8 in Paper No. 10, dated 3/19/03.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2872

7. Claims 4, 10-12, 14-18, and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Maekawa et al. in view of Martin et al. (U.S. Patent No. 4573796).

See Section 10 in Paper No. 10, dated 3/19/03.

8. Claims 3, 9, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maekawa et al. in view of Martin et al.

See Section 11 in Paper No. 10, dated 3/19/03.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maekawa et al. in view of Ross et al. (U.S. Patent No. 5877863).

See Section 12 in Paper No. 10, dated 3/19/03.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 2872

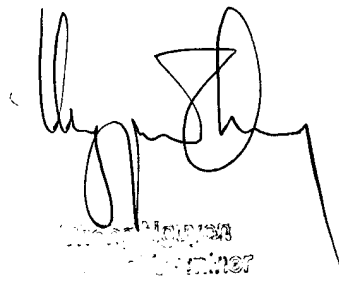
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arnel C. Lavarias whose telephone number is 703-305-4007. The examiner can normally be reached on M-F 8:30 AM - 5 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew Dunn can be reached on 703-305-0024. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.



Arnel C. Lavarias
August 1, 2003



Arnel C. Lavarias
Examiner